IN THE HIGH COURT OF CHHATTISGARH, BILASPUR (C.G.)

WRIT PETITION NO.742/2004

PETITIONER
Non Applicant :

Harpal Singh Bhatia, s/o. Shri Rawel Singh Bhatia (wrongly mentioned as Hardayal Singh Bhatia before the court below), aged about 43 years, R/o Lal Bagh Housing Board Colony, Rajnandgaon, Dist. Rajnandgaon (C.G.)

VERSUS

RESPONDENTS :
(No. 1-7 APPLICANTS)

1. **Smt. Shahnaz Parveen,** Widow of late Aziz Khan, aged about 35 years;
2. Avesh Khan, s/o late Aziz Khan, aged about 11 years;
3. Ku. Nigahat d/o late Aziz Khan, aged about 10 years;
4. Ku. Nusarat d/o late Aziz Khan, aged about 9 years;
5. Sohail Khan s/o late Aziz Khan, aged about 8 years;
6. Suhaib Khan s/o late Aziz Khan, aged about 8 years;
7. Smt. Sugra Bi widow of late Rahman Khan, aged about 52 years;

-Respondents No. 2 to 6 minors through their guardian & mother Smt. Shahnaz Parveen widow of late Aziz Khan as their next friend;
-All Respondents No. 1 to 7 Residents of C/o Bashir Khan R/o Rahul Nagar.

Lakholi, Rajnandgaon, Tehsil & Dist.
Rajnandgaon (C.G.)

8. The Commissioner,
For Workmen's Compensation,
Labour Court, Durg (C.G.)

WRIT PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT/WRITS, ORDER/ORDERS, OR/AND DIRECTION / DIRECTIONS IN THE NATURE OF MANDAMUS/CERTIORARI, OR OF ANY OTHER APPROPRIATE NATURE.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP No. 742/04 **सन्** 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

13-6-2005

Shri M.P.S. Bhatia, counsel for the petitioner.

Shri Santosh Yadu, counsel for respondents No.1 to 7.

The petitioner has preferred this writ petition questioning the legality, propriety and correctness of the order dated 29-1-2003 passed in Case No.17/02W.C.Act/Fatal/02 by the Commissioner, Workmen's Compensation, Durg and also questioning the legality, propriety and correctness of the order dated 5-2-2004 whereby the application of the petitioner filed under Order 9 Rule 13 of the C.P.C. has been rejected.

Brief facts, as mentioned in the impugned order, leading to filing of this writ petition are that deceased Aziz Khan, son of Rahman Khan was working as driver in the transport company of the petitioner. On 20th February 2000, the deceased was driver of truck bearing registration No.M.P.24-C/0907 and on that day he took the said truck from Rajnandgaon to Bemetara. On the way he stopped the truck near old pond (Junatalab) Nayapara, Bemetara and when he went to take the bath, he died on account of drowning in the pond. A death case No.5/2000 was registered at the Police Station Bemetara.

Further case of the widow of deceased Aziz Khan was that he was drawing Rs.2,000/- per month as salary and Rs.500/- per month as

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

travelling allowance and dearness allowance. A legal notice was sent by the advocate of respondent No.1 on 1-4-2000 claiming compensation of Rs.2,46,325/- under the Workmen's Compensation Act, as the case of respondent No.1 was that Aziz Khan died while in the employment of the petitioner. When the amount was not paid, the matter was filed under the Workmen Compensation Act in the Court of Commissioner for Workmen's Compensation, Labour Court, Durg and as per the order dated 29-1-2003 passed by the Commissioner for Workmen's Compensation, notice of the petition was sent to the petitioner, even after receipt of the same no reply was filed by the petitioner nor he presented himself before the Commissioner, therefore, the matter was ordered to be proceeded ex-parte against the petitioner herein and evidence of respondent No.1 was recorded. Respondent No.1 in her evidence has stated that her husband was working in the transport company of the petitioner herein as driver and at the time of the incident he was aged about 40 years and he was earning monthly salary of Rs.2,000/-. She and her children were dependent on her husband. When her husband went to fetch water, he fell in the pond and died. Ex.-P/2 is the driving licence. Other witness namely Hussain Khan also supported the evidence of respondent No.1. Relying on the evidence of above two witnesses, the Commissioner for Workmen's Compensation

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

allowed the petition and passed the award of Rs.1,84,170/- against the petitioner herein.

The petitioner herein moved an application under Order 9 Rule 13 of the C.P.C. for setting aside the ex-parte award dated 29-1-2003. However, the said application was rejected by the Commissioner vide order dated 5-2-2004 on the ground that deceased Aziz Khan was driver in the transport company of the petitioner since 1988 and on the fateful day i.e. 20th February 2000 he was driving the truck bearing registration No.M.P.24-C/0907, therefore, he was employee of the petitioner herein and a notice was sent to the petitioner and acknowledgement of the same was attached with the main case, therefore, the Commissioner while considering the service sufficient on 14-5-2002 proceeded ex-parte against the petitioner. On these facts the Commissioner considered the service on the petitioner sufficient and rejected the application.

I have heard learned counsel for the parties.

Learned counsel for the petitioner argued in the first instance that the petitioner was not registered owner of the truck in question whereas, his brother Devender Singh was the registered owner. Moreover, in the notice, the name of the father of the petitioner was wrongly mentioned as Hardayal Singh whereas, the petitioner's father's

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

name is Sardar Ravail Singh, therefore, the petitioner could not understand that the proceeding is pending against him, as the deceased was not employee of the petitioner, as such the impugned orders dated 5-2-2004 and 29-1-2003 are illegal and perverse.

On the other hand, learned counsel for respondents argued that the impugned orders of the Commissioner for Workmen's Compensation are legal and same are based on the evidence and facts of the case. Registered owner of the truck in question i.e. Devender Singh and the petitioner are real brothers, therefore, even if the truck was not registered in the name of the petitioner that does not mean that the petitioner was not employer. Both the brothers i.e. the petitioner and Devender Singh are members of the joint family and the truck in question was plying under the control of the petitioner who was the employer of late Aziz Khan, as it is clear from the impugned order that notice of original petition was served on the petitioner but he failed to appear before the Commissioner, therefore, the proceedings were directed to proceed ex-parte against the petitioner.

In this connection, employer has been defined in Section 2 (1) (e) of the Act of 1923 which envisages that "*"employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of a deceased employer, and*

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —S—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him.' Therefore, as per the above definition of employer, the employer includes any managing agent of an employer, therefore, even if the truck in question was not registered in the name of the petitioner, the petitioner is the real brother of the registered owner Devender Singh. Respondent No.1, wife of the deceased, has categorically stated in her statement before the Commissioner for Workmen's Compensation that her husband was working as driver in the transport company of Harpal Singh and she has not been cross-examined on this count and her above evidence remained un-rebutted.

As such, in view of the above evidence and facts of the case, the petitioner was the employer of deceased Aziz Khan as per Section 2 (1) (e) of the Workmen's Compensation Act, 1923.

Another question raised by learned counsel for the petitioner is that the father's name of the petitioner in the notice and the proceeding was mentioned incorrectly. But in my opinion, on this count also the petitioner is not entitled to take advantage of the situation as in the notice facts were mentioned and based on those facts and truck

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —6—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

number the petitioner was aware that the matter pertains to Aziz Khan and their truck, therefore, he had a sufficient notice that the matter pertains to their transport company, as such he could not take any advantage that he was not informed and was not aware about the facts of the petition. Even after receiving the notice he could not have understood the situation that the matter is pending against him.

Now, coming to the question that Aziz Khan died on account of drowning in the pond, therefore, it cannot be considered that he died in the course of the employment. In this connection also Section 3 (1) of Chapter II of the Act envisages that '*if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.*' Only except the situation provided in proviso to sub-section (1) of Section 3 that if any workmen received injury and died in the course of the employment, then his heirs are entitled for the compensation. In the present case, it is admitted position that on the fateful day and time late Aziz Khan was driving the truck of the petitioner's transport company and when his truck reached near old pond of Nayapara, Bemetara, he stopped the truck and went to the pond where he died on account of drowning. Therefore, late Aziz Khan died during the course of the employment.

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Therefore, for the foregoing reasons, I am of the opinion that the proceedings were directed to be proceeded ex-parte against the petitioner on his failure to appear before the Commissioner and prior to that even notice was issued to him by counsel for respondent No.1, even on merit also the petitioner has not been able to make out a case for interference by this Court, as such I do not find any illegality or infirmity in the impugned orders. The petition is liable to be dismissed and it is accordingly dismissed.

Consequently, M.(W.)P. No.659/2004 and I.A.No.1910/2005 also stand disposed of.

Sd/-
L.C.BHADOO
Judge

Barve

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(पीछे देखिये)